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**PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

**ENERGY DIVISION**

**Item #12 (Rev. 1)**

**ID #13013**

**RESOLUTION E -4658**

**June 26, 2014**

**R E S O L U T I O N**

Resolution E-4658. PG&E requests approval of a one-time Agreement with UC Davis to Perform Tariff Schedule Related Work deviating from the standard indemnity clause of Form 62-4527.

PROPOSED OUTCOME: Pursuant to General Order 96-B, Section 8.2.3, this Resolution grants PG&E's request to deviate from the standard indemnity clause of Form 62-4577, Agreement to Perform Tariff Schedule Related Work, on a one-time basis under its Agreement with UC Davis to perform a Transmission-to-Distribution Line conversion project requested by the UC Davis at its property in Lake County.

SAFETY CONSIDERATIONS: No known impact on safety because this deviation does not change the standard care of work performed.

ESTIMATED COST: No additional costs identified

By Advice Letter 4396-E Filed on April 11, 2014.

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**SUMMARY**

This Resolution approves PG&E's request for approval of a one-time deviation from its standard language regarding indemnification for tariff schedule work in filed Form 62-4527. The deviation mainly removes the requirement that the applicant for the work, in this case UC Davis, defend any suit asserting a claim covered by the indemnity stated.

**BACKGROUND**

The Regents of the University of California (UC Davis) has requested that PG&E remove the existing overhead electric lines that provide transmission service to a

site occupied by UC Davis, the now decommissioned Homestake Mine, 26774 Morgan Valley Road in Lower Lake (Lake County). UC Davis requested that PG&E's transmission facilities be replaced with new facilities that will provide distribution service.

The scope of work involves the installation of approximately 442' of overhead 12 kV conductors, and approximately 150' of 12 kV underground cables to serve the customer. PG&E will remove the transmission level service to the customer-owned substation after the new distribution level service is energized. Electric Rule 15.I.1 (Distribution Line Extensions) governs the rearrangement of distribution facilities. Rearrangement is generally performed under PG&E's general contract form, Agreement to Perform Tariff Schedule Related Work, Form 62-4527. UC Davis has objected to the scope of the indemnity provision in Form 62-4527, and has requested that its obligation to indemnify PG&E be limited to any losses that are caused by or result from UC Davis' negligent or intentional acts or omissions. To address this concern, PG&E has agreed to modify the indemnity language found in Form 62-4527 and to use revised language in a limited One Time Agreement to Perform Tariff Schedule Related Work.

On April 11, 2014, PG&E filed Advice Letter (AL) 4396-E, as a Tier 3 advice filing, to notify the Commission of their provision of tariff related services under deviating terms and conditions to a government agency, UC Davis, pursuant to GO 96B, Section 8.2.3.

### **NOTICE**

Notice of AL 4396-E was made by publication in the Commission's Daily Calendar. PG&E states that a copy of the Advice Letter was mailed and distributed in accordance with Section 4 of General Order 96-B.

### **PROTESTS**

AL 4396-E was not protested.

### **DISCUSSION**

Energy Division has reviewed AL 4396-E.

Relocation or rearrangement of PG&E's existing facilities, at the request of, or to meet the convenience of an Applicant or customer, and agreed upon by PG&E, is normally performed by PG&E under the provisions of Section I.1, Special Condition of Rule 15 (Distribution Line Extensions). Under Rule 15, the Applicant or customer is responsible for the costs of all related relocation, rearrangement and removal work.

Filed Form 62-4527 contains indemnity language, which the Applicant or customer signs prior to the start of utility's work, as follows:

Applicant shall indemnify and hold harmless PG&E, its officers, agents and employees, against all loss, damage, expense and liability resulting from injury to or death of any person, including but not limited to, employees of PG&E, Applicant or any third party, or for the loss, destruction or damage to property, including, but not limited to property of PG&E, Applicant or any third party, arising out of or in any way connected with the performance of this agreement, however caused, except to the extent caused by the active negligence or willful misconduct of PG&E, its officers, agents and employees. Applicant will, on PG&E's request defend any suit asserting a claim covered by this indemnity. Applicant will pay all costs that may be incurred by PG&E in enforcing this indemnity, including reasonable attorneys' fees.

UC Davis however requested changes to this language, limiting its exposure to specifically make PG&E (its officers, agents and employees) responsible for not only "active negligence or willful misconduct", but also "fault of or negligence or intentional acts or misconduct". UC Davis also requested that the clause "Applicant will, on PG&E's request, defend any suit asserting a claim covered by this indemnity" be deleted.

UC Davis' argument is that the California state constitution prohibits the state, its divisions and agencies to agree to PG&E's standard indemnity provisions.

The modified indemnity language PG&E and UC Davis have agreed to is as follows:

Applicant shall indemnify and hold harmless PG&E, its officers, agents and employees, against all loss, damage, expense and liability

resulting from injury to or death of any person, including but not limited to, employees of PG&E, Applicant or any third party, or for the loss, destruction or damage to property, including, but not limited to property of PG&E, Applicant or any third party, arising out of or in any way connected with the performance of this agreement, however caused, except to the extent caused by fault of or the active negligence or intentional acts or willful misconduct of PG&E, its officers, agents and employees. ~~Applicant will, on PG&E's request defend any suit asserting a claim covered by this indemnity.~~ Applicant will pay all costs that may be incurred by PG&E in enforcing this indemnity, including reasonable attorneys' fees.

General Order (G.O.) 96-B, Section 8.2.3 states (emphasis added):

A utility other than a telephone corporation may provide service (other than resale service) to a government agency for free, or at reduced rates and charges, or *under terms and conditions otherwise deviating from its tariffs then in effect*. The utility may begin such service without prior Commission approval, but the utility shall promptly submit an advice letter to the appropriate Industry Division to notify the Commission of the utility's provision of such service and of the rates, charges, terms and conditions under which the service is provided. Although the advice letter may be effective pending disposition under General Rule 7.5.3, the Commission may determine, in an appropriate proceeding, the reasonableness of such service.

For purposes of this General Rule 8.2.3, "government agency" means the United States and its departments, Indian tribes recognized by the United States or the State of California, the State of California and its political subdivisions and municipal corporations, including the departments thereof, and public fairs and celebrations.

Based on this language we believe that PG&E's request is reasonable and should be granted.

## **COMMENTS**

Public Utilities Code section 311(g)(1) provides that this resolution must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. Section 311(g)(2) provides that this 30-day period may be reduced or waived upon the stipulation of all parties in the proceeding.

The 30-day comment period for the draft of this resolution was neither waived nor reduced. Accordingly, this draft resolution was mailed to parties for comments, and will be placed on the Commission's agenda no earlier than 30 days from today.

On June 13 PG&E filed a comment to correct the reference in the Background section from “ ... Section I.1, Special Facilities of Rule 2 (Description of Service). Under Rule 2 ...” to “... Section I.1, Special Conditions of Rule 15 (Distribution Line Extensions). Under Rule 15 ...”.

We have incorporated PG&E's comment as a more appropriate reference for the responsibility of costs for relocation and arrangement work.

## **FINDINGS**

1. PG&E filed AL 4396-E requesting deviation from the standard indemnity language of filed tariff Form 62-4527, Agreement to Perform Tariff Schedule Related Work, for a Transmission-to-Distribution Line conversion project requested by the UC Davis at its property in Lake County.
2. State constitution prohibits UC Davis from signing PG&E's standard indemnity clause.
3. G.O. 96-B, Section 8.2.3 allows the Commission to grant utilities' requests for provision of service to government agencies under terms and conditions that deviate from tariff otherwise in effect.

**THEREFORE IT IS ORDERED THAT:**

1. PG&E's request to deviate from the standard indemnity language in Form 62-4527, Agreement to Perform Tariff Schedule Related Work, as requested in Advice Letter 4396-E is approved.

This Resolution is effective as of April 11, 2014.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on June 26, 2014; the following Commissioners voting favorably thereon:

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PAUL CLANON  
Executive Director